# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSCAR BECK, JR.,

Defendant-Appellant.

UNPUBLISHED
October 5, 2006

No. 262682
Wayne Circuit Court
LC No. 04-012688-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for carjacking, MCL 750.529a, receiving and concealing stolen property, MCL 750.535(7), and possession of firearm during the commission of felony, MCL 750.227b. Defendant was sentenced to 2 to 15 years in prison for the carjacking conviction, 2 to 5 years in prison for the receiving and concealing stolen property conviction, and 2 years in prison for the felony-firearm conviction. The Judgment of Sentence indicated a sentence of 4 to 15 years for the carjacking conviction, so an Amended Judgment of Sentence was entered to reflect the correct sentence. Defendant also filed a motion for resentencing, arguing that the convictions of both carjacking and receiving and concealing stolen property violated double jeopardy, but this motion was denied. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that his convictions for carjacking and receiving and concealing stolen property constitute multiple punishments for the same offense in violation of double jeopardy. Double jeopardy is an issue of constitutional law, and therefore, it is reviewed de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

The United States and Michigan Constitutions both contain clauses that prohibit putting a defendant twice in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15; *Herron*, *supra* at 599. The double jeopardy clause protects a defendant from both multiple prosecutions and multiple punishments for the same offense. *Herron*, *supra* at 599. This case involves the prohibition of multiple punishments for the same crime. The purpose of this prohibition is to prevent a court from imposing a greater sentence than that intended by the Legislature. *Hawkins v Department of Corrections*, 219 Mich App 523, 526; 557 NW2d 138 (1996). The Legislature, on the other hand, is not limited in its capacity to establish punishments and may authorize cumulative punishments. *People v Meshell*, 265 Mich App 616, 628-629; 696 NW2d 754 (2005); *Hawkins*, *supra* at 526-527.

The federal test for multiple punishments is the *Blockburger*[1] test. *Meshell*, *supra* at 629. According to this test, if each offense contains an element not contained in the other, then a presumption arises that the Legislature intended multiple punishments. If the elements of one offense are encompassed in the elements of the other, then the presumption is to the contrary. However, "this presumption is overcome when a legislature clearly expresses a contrary intent." *Id*. at 629.

In Michigan, legislative intent is determined by considerations of subject, language, and history of the statutes. *People v Denio*, 454 Mich 691, 708; 564 NW2d 13 (1997). There is a presumption that the legislature did not intend multiple punishments where two statutes prohibit violations of the same societal norm, or where they are part of a hierarchy of offenses in which the penalty is increased due to aggravating conduct. *Herron*, *supra* at 605; *Meshell*, *supra* at 630. However, if one of the offenses is completed before the other takes place, there is no double jeopardy violation even if they are part of a hierarchy. *People v Colon*, 250 Mich App 59, 63; 644 NW2d 790 (2002). If multiple punishments are found to violate double jeopardy, the remedy is to vacate the lesser charge. *Meshell*, *supra* at 633-634.

Under both the federal and Michigan tests, defendant's convictions for both offenses do not violate double jeopardy. The offense of carjacking has three elements: (1) the use of force or violence, or threat of force or violence, or putting in fear; (2) the robbing, stealing, or taking of a motor vehicle from another person; and (3) in the presence of that person, of a passenger, or of any other person in lawful possession of the motor vehicle. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998); *People v Parker*, 230 Mich App 337, 343; 584 NW2d 336 (1998). The elements of receiving and concealing stolen property are:

> (1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen. [*People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002), citing *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996).][2]

Receiving and concealing stolen property does not require any of the three elements of carjacking, and carjacking does not necessarily encompass the elements of receiving and concealing because carjacking involves the actual stealing of the vehicle rather than the identity of the vehicle as being *previously* stolen. Therefore, convictions under both offenses do not violate double jeopardy under the *Blockburger* test. These two offenses are not a part of a hierarchy because one does not encompass the elements of the other. *Meshell*, *supra* at 630. The trial court correctly concluded that these were two separate offenses because, first, defendant took the vehicle, and second he retained it for several days. Therefore, one offense was

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[1] *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932).

[2] Defendant was convicted more specifically with receiving and concealing a stolen motor vehicle under the same statute. MCL 750.535(7).

completed before the other began, and so, there is no double jeopardy violation. *Colon*, *supra* at 63.

In addition, the Legislature clearly expressed its intent to allow multiple punishments for the two offenses. The language of the carjacking statute provides, "[a] sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction." *Parker*, *supra* at 343; MCL 750.529a. The statute for receiving and concealing a stolen vehicle provides, "[t]his subsection does not prohibit the person from being charged, convicted, or punished under any other applicable law." MCL 750.535(7). Similar language in other statutes has been held to demonstrate clear legislative intent to allow multiple punishments for offenses arising out of the same transaction. See, e.g., *People v Conley*, 270 Mich App 301; 715 NW2d 377 (2006); *People v Shipley*, 256 Mich App 367, 378; 662 NW2d 856 (2003).[3] The language of the statutes clearly indicates the Legislature's intent to allow for multiple punishments for these two offenses.

Defendant's convictions for carjacking and receiving and concealing stolen property do not constitute multiple punishments in violation of double jeopardy. Each offense contains an element not contained in the other. The two offenses are not part of a hierarchy of offenses in which the penalty is increased due to aggravating conduct, and one of the offenses was completed before the other took place. Finally, the language of the statutes clearly shows that the Legislature intended multiple punishments. We hold, therefore, that defendant's convictions do not violate double jeopardy.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

[3] In both cases, this Court interpreted the following language in the first-degree home invasion statute to be clear legislative intent to allow multiple punishments: "[i]mposition of a penalty under this section does not bar imposition of a penalty under any other applicable law." *Conley*, *supra* at __; *Shipley*, *supra* at 378.